

NORMAN J. CARLSON,

V.

Defendant.

No. 4:12CV1111 HEA

Before the Court is plaintiff's motion relating to the Court's June 26, 2012 Memorandum and Order requiring plaintiff to either pay the \$350 filing fee or submit a motion to proceed in forma pauperis. Plaintiff states that his action for return of property should not require a filing fee as it should have been filed as a motion in his criminal case.

In the Eighth Circuit, "[p]ost-conviction filings for the return of property seized in connection with a criminal case are treated as civil equitable actions, and the district court where the claimant was tried has subject-matter jurisdiction ancillary to its criminal jurisdiction to hear the equitable action." Thompson v. Covington, 47 F.3d 974, 975 (8th Cir. 1995). As such, plaintiff is required to comply with the Court's June 26, 2012 Memorandum and Order if he wishes to proceed with his request for return of property. He must either pay the \$350 filing fee or submit a motion to

proceed in forma pauperis within thirty (30) days of the date of this Memorandum and Order.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's request to waive the filing fee in this action for return of property [Doc. #3] is **DENIED**.

IT IS FURTHER ORDERED that plaintiff shall either pay the \$350 filing fee or submit a motion to proceed in forma pauperis within thirty (30) days of the date of this Memorandum and Order.

IT IS FURTHER ORDERED that if plaintiff submits a motion to proceed in forma pauperis, he must also submit a certified copy of his prison account statement for the six month period immediately preceding the filing of his complaint.

IT IS FURTHER ORDERED that the Clerk shall mail plaintiff a copy of the Court's form motion to proceed in forma pauperis - prisoner cases.

IT IS FURTHER ORDERED that if plaintiff fails to comply with this Memorandum and Order, the Court may dismiss this action without prejudice.

Dated this 17th day of July, 2012.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE